

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA**

**THE ASSOCIATED GENERAL
CONTRACTORS OF AMERICA, INC.**

2300 Wilson Blvd., Suite 300
Arlington, VA 22201

**LOUISIANA ASSOCIATED GENERAL
CONTRACTORS,**

666 North St.
Baton Rouge, LA 70802

Civil Action No. 6:24-cv-37

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; **FEDERAL ACQUISITION REGULATORY COUNCIL; GENERAL SERVICES ADMINISTRATION; JEFFREY E. KOSES**, in his official capacity as Administrator of General Services Administration; **OFFICE OF FEDERAL PROCUREMENT POLICY; CHRISTINE J. HARADA**, in her official capacity as FAR Council Chair and Senior Advisor to the Deputy Director for Management, Office of Federal Procurement Policy; **DEPARTMENT OF DEFENSE; JOHN M. TENAGLIA**, in his official capacity as Principal Director, Defense Pricing and Contracting, Office of Secretary of Defense; **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; KARLA S. JACKSON**, in her official capacity as Assistant Administrator for Procurement, National Aeronautics and Space Administration

Defendants,

MOTION FOR PRELIMINARY INJUNCTION AND STAY

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, and 5 U.S.C. § 705, Plaintiffs Associated General Contractors of America, Inc. (“AGC of America”) and Louisiana Associated General Contractors (“Louisiana AGC”) file this Motion for Preliminary Injunction and Stay seeking to enjoin Defendants from enforcing Executive Order 14063, “Executive Order on Use of Project Labor Agreements for Federal Construction Projects,” signed by President Biden on February 4, 2022, 87 Fed. Reg. 7363 (Feb. 9, 2022), as implemented through Federal Acquisition Regulation: Use of Project Labor Agreements for Federal Construction Projects, 88 Fed. Reg. 88708 (Dec. 22, 2023), and to stay the effective date of the Final Rule, during the pendency of this lawsuit.

On February 4, 2022, President Biden issued Executive Order 14063, “Executive Order on Use of Project Labor Agreements for Federal Construction Projects,” directing the Federal Acquisition Regulation (FAR) Council to promulgate regulations requiring federal construction contractors to enter into project labor agreements—a unique form of collective bargaining agreement for specific construction projects—in order to participate in federal construction projects valued at greater than \$35 million. *See* 87 Fed. Reg. 7363 (Feb. 9, 2022) (Order). As authority for issuing the order, President Biden cited the Constitution, the Federal Property and Administrative Services Act, and the President’s statutory delegation authority. On December 22, 2023, the FAR Council published a Final Rule implementing the directives of the Order by prescribing uniform contractual requirements for all construction contractors participating in projects valued at greater than \$35 million to enter into a PLA. *See* 88 Fed. Reg. 88708 (Final Rule).

Plaintiffs now ask the Court to enjoin Defendants from enforcing the aforementioned Final Rule and the Order it implements because they are unlawfully imposed. Plaintiffs also ask the Court to stay the effective date of the Final Rule, currently January 22, 2024. As explained in Plaintiffs' Brief in Support of this Motion, Plaintiffs are entitled to the injunctive relief requested herein because: (1) there is a substantial likelihood that Plaintiffs will prevail on the merits of their claims in this action; (2) Plaintiffs' members face a substantial threat of imminent and irreparable harm for which no adequate remedy at law exists if injunctive relief is denied; (3) the injury to Plaintiffs' members outweighs any harm to Defendants that may result from the grant of injunctive relief; and (4) granting injunctive relief will promote, not disserve, the public interest.

No security in the form of a bond is warranted under Federal Rule of Civil Procedure 65 because the Government would not sustain any costs or damages as a result of being enjoined. However, to the extent a bond is required a matter of law, the value of such a bond should be nominal or the minimum allowed by law.

PRAYER

WHEREFORE, Plaintiffs respectfully request that this Court issue a preliminary injunction restraining and enjoining, during the pendency of this lawsuit, Defendants, and their agencies, officials, and employees, agents, and representatives and all persons or entities acting in concert with them from:

- (a) implementing or enforcing the Order and Final Rule;
- (b) incorporating or attempting to incorporate any clause or other contractual requirement mandating the use of PLAs into any federal construction contract;
- (c) promulgating any new or related requirement for the use of PLAs in federal construction contracts; and
- (d) promulgating any new agency-level class deviations or requirements in furtherance of the Order

Plaintiffs further respectfully request that the Court stay the effective date of the Final Rule during the pendency of this lawsuit.

January 10, 2024

Respectfully submitted,

Breazeale, Sachse & Wilson, LLP

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/s/ Murphy J. Foster, III

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Lead counsel for Plaintiffs

CERTIFICATE OF CONFERENCE

The undersigned counsel for Plaintiffs certifies that a conference was not possible because this motion is filed with the initial Complaint and the urgent need to enjoin the Final Rule.

Respectfully submitted,

By: /s/ *Murphy J. Foster, III*

Murphy J. Foster, III
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 10th of January, 2024, I sent a copy of the Motion for a Preliminary Injunction and Stay via certified mail to the Defendants.

Respectfully submitted,

By: /s/ *Murphy J. Foster, III*

Murphy J. Foster, III
Counsel for Plaintiffs